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June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY  
PROTECTED FROM DISCLOSURE  
UNDER FRE 408**

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Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, Illinois 60604

Re: Consolidated Rail Corporation – Skinner Landfill, West Chester, Ohio –  
De Minimis Settlement

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Dear Ms. Estes:

We are legal counsel to Consolidated Rail Corporation (“Conrail”) in connection with the above-referenced matter. As you may be aware, Conrail entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs’ claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Conrail (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA) that is at least as protective of the Company’s interests as are the terms of U.S. EPA’s Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Conrail’s understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Conrail qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor’s waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator’s findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

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Sherry Estes, Esq.

June 3, 1999

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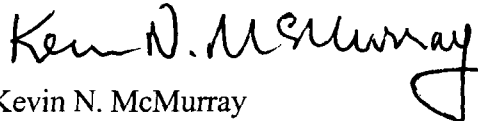
Accordingly, I am enclosing the information requested by U.S. EPA for Conrail. I believe that this information amply demonstrates that Conrail is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Conrail understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Conrail and the other *de minimis* settlors in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Conrail does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Conrail is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the Company strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP



Kevin N. McMurray  
Counsel for Conrail

KNM:llb

Enclosures

cc: William Pinamount, Esq. (w/encls.)

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MAY 24 1993

**Consolidated Rail Corporation**

Settlement Amount: \$2,000.00

SNH

**Excerpt from Allocator's Preliminary Report :**

Conrail was formed on April 1, 1976 by an Act of Congress. Conrail listed 11 railroad yard locations in the Skinner vicinity. Some conducted maintenance activities including refueling and sanding, car and locomotive repairs, repair/replacement of track and ties and maintenance of off and on-road vehicles. There were no manufacturing operations at these locations.

Conrail claimed that it hauled no material to Skinner. It only hauled to sites that had a railroad side track that permitted delivery directly from rail cars. The Site did not have such a side track. Rather, Conrail maintained a main line right of way for the movement of frequent high speed trains near the Skinner Site. Its interviewees had no recollection of a usage of the Site. It had no records that reflected any payments to the Skinner Landfill.

Rumpke serviced some of the facilities for most of the 1976 - 1990 time frame. From 1989 -1990, Rumpke serviced the Sharonville Yard on a monthly basis with three 6 cy containers, one 4 cy container, and one 3 cy container. Other facilities self-hauled to sites that had railroad siding delivery service. As noted above, Conrail said that Skinner did not have such access.

Rumpke hauled wood pallets, scrap wood, paper and office trash, cafeteria and vending machine trash, cardboard, plastic, and drained oil filters [approximately 30/yr]. Conrail said that it reclaimed all metal taken out of railroad service. While Conrail said that it had not found any evidence it ever sent waste to the Site, it did not know for certain where Rumpke took its waste. It did note, however, that its Rumpke contract specified disposal at Rumpke Landfill.

Conrail analyzes the evidence in relation to the date of April 1, 1976. It says that the Regional Rail Reorganization Act (Rail Act) separated passenger and freight service and created regional commuter railroads. Conrail was created to form a freight railroad and it received by conveyance from the trustees of the Penn Central, all of the assets necessary for such operations. Assets not needed for a freight railroad operation were transferred to the successor of the Penn Central, American Premier Underwriters, another ADR participant discussed earlier in this report.

Under the Rail Act, a Special Federal Court was created to address all controversies arising from the reorganization of the railroads, I was advised. The Special Court has apparently ruled that Conrail may not be subjected to CERCLA liability based on circumstances arising before April 1, 1976. Regional Rail Reorg. Ct., Civ. No. 92-1 (August 23, 1994). It held that Penn Central could be held liable for pre-conveyance CERCLA liabilities, I was advised. American Premier Underwriters has not argued otherwise, so I accept the argument.

Did Conrail waste reach the Site after April 1, 1976? The Ray Skinner testimony says that railroad wastes reached the Site after April 1, 1976 primarily in the form of ties, spikes and metal. R. Skinner Depo., p. 548. He said so in the context of a discussion of Penn Central and Conrail. Lloyd Gregory confirmed the disposal of railroad ties, and spikes and plates in the 1980s but could not say from what railroad source. Conrail said it has no evidence of waste disposal at the Site. This is yet another stark contrast in a case of conflicting evidence.

I cannot ignore Ray Skinner testimony any more than I can ignore Conrail's submittal. But I can weigh them. In that weighing, at this time I have decided to assign Conrail a default allocation of 50 cys. I call it a default because it is a number that is considerably below the amount that would be derived from the testimony of Ray Skinner and represents my sense of a likely outcome yet, hopefully, may avoid the cost of litigation which likely will have to go beyond the summary judgment stage given the presence of disputed issues of material fact.

**Excerpt from Allocator's Final Report :**

**See the Avon Products, Inc. discussion.**

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste In Total Cys 372908	Percentage	Liquid Waste In Total Gallons 282252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
CONSOLIDATED RAIL CORPORATION	50	0	372908	0.0134%	282252	0.0000%	0.00%	0.00%			0.00134%